

**U.S. DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION
WASHINGTON, D.C. 20202**

**APPLICATION FOR PARTICIPATION
IN THE
STATE FLEXIBILITY
DEMONSTRATION PROGRAM
(State-Flex)**

**FORM APPROVED
OMB No. 1810-0660, EXP. DATE 3/31/2003**



DATED MATERIAL - OPEN IMMEDIATELY

Closing Date: January 17, 2003

TABLE OF CONTENTS

- Section A.** Dear Colleague Letter
- Letter from the Assistant Secretary for Elementary and Secondary Education
- Section B.** How to Use This Application Package
- Section C.** Federal Register Notices, Program Statute and Equitable Participation Guidance
- Application Notice
 - Notice of Final Application Requirements, Selection Criteria, and Competition Schedule
 - Program Statute
 - General Equitable Participation Guidance
- Section D.** Preparing an Application
- Introduction to the State Flexibility Demonstration Program
 - Discussion of Application Requirements
 - Selection Criteria
 - Guidelines for Preparing Your State-Flex Proposal
 - SEA Application Cover Page
 - SEA Consolidated Funds Form
 - SEA Application Assurances
 - Local Performance Agreement Cover Page
 - LEA Consolidated Funds Form
- Section E.** Transmittal Instructions and Checklist
- Application Transmittal Instructions
 - Application Checklist
- Section F.** Procedures for Selecting State-Flex Participants
- Section G.** Estimated Public Reporting Burden

SECTION A

DEAR COLLEAGUE LETTER



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

THE ASSISTANT SECRETARY

October 11, 2002

Dear Colleague:

Thank you for your interest in the State Flexibility Demonstration program (State-Flex), authorized under the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001. This groundbreaking program will provide participating State educational agencies (SEAs), and the local educational agencies (LEAs) with which they enter into performance agreements, with unprecedented flexibility to use Federal funds to meet State and local needs.

State-Flex authority involves three major components –

- *SEA Consolidation of certain State-level Federal funds* – State-Flex provides an SEA with the flexibility to consolidate certain Federal funds reserved for State administration and State-level activities and to use those funds for any ESEA purpose in order to meet the State's definition of adequate yearly progress and narrow achievement gaps.
- *Local performance agreements* – An SEA that is granted State-Flex authority enters into performance agreements with four to ten LEAs in the State, permitting those LEAs to consolidate certain Federal formula grant funds and to use those funds for any ESEA purpose consistent with the SEA's State-Flex plan.
- *State Input on Local Use of Title V, Part A funds* – An SEA with State-Flex authority may specify how all of its LEAs will use the funds that they receive under Part A of Title V of the ESEA (Innovative Program funds). The SEA must comply, however, with the normal requirements in Title V for allocating those funds.

The enclosed application package contains the information that you will need to prepare and submit a State-Flex proposal. As these materials explain, to exercise State-Flex authority, you must have an approved definition of adequate yearly progress (AYP) that meets the requirements in section 1111(b)(2)(B) of the reauthorized ESEA. If your AYP definition has not yet been approved, you are nonetheless eligible to receive conditional State-Flex authority. However, an SEA with conditional State-Flex authority will not be able to implement the State-Flex authority or its State-Flex plan (including the local performance agreements) until the Department approves its State AYP definition. by March 31, 2003.

To be considered in the initial State-Flex competition, you must submit your State-Flex proposal no later than January 17, 2003.

For further information on this program, please visit our website at <http://www.ed.gov/flexibility> or send an e-mail to Ms. Milagros Lanauze of my staff at StateFlex@ed.gov.

We look forward to receiving your application, and appreciate your efforts to improve student achievement in your State.

Sincerely,

/s/

Susan B. Neuman, Ed.D.

Enclosures

SECTION B

HOW TO USE THIS APPLICATION PACKAGE

HOW TO USE THIS APPLICATION PACKAGE

This application package contains documents, information, and tools to assist you in preparing and submitting your State-Flex application.

In preparing your application, you should use Sections C and D together.

Section C contains the following documents that you should review before preparing your State-Flex application:

- The Notice Inviting Applications, which discusses eligibility for this program and the deadline for receiving applications.
- The Notice of Final Application Requirements, Selection Criteria, and Competition Schedule, which establishes application requirements and selection criteria for this program; it also discusses the competition schedule for the program.
- The Program Statute (Title VI, Part A, subpart 3 of the reauthorized ESEA), which has been reprinted here for your convenience.
- The General Equitable Participation Guidance, which contains information concerning the provision of equitable services to private school students and staff.

In **Section D**, you will find the following:

- An Introduction to the State-Flex Program, which explains the purposes of and major components of the program.
- A Discussion of the Application Requirements, which includes the requirements detailed in the Notice of Final Application Requirements, Selection Criteria, and Competition Schedule and references the other information that you must include in your application.
- The Selection Criteria that will be used by reviewers to judge your application. (They are reprinted for your convenience from the Notice of Final Application Requirements, Selection Criteria, and Competition Schedule.) Your State-Flex application should address the selection criteria as well as the application requirements.
- Guidelines for preparing your State-Flex proposal, which provides some general advice for preparing your application.
- The State-Flex Application Cover Page, the SEA Consolidated Funds Form, and the State-Flex Assurances form that must be filled out, signed by the authorized official, and submitted as part of your application.
- The Local Performance Agreement Cover Page, the LEA Consolidated Funds Form, and the Local Performance Agreement Assurances form that must be filled out by each LEA with which your State proposes to enter

into a local performance agreement, signed by the authorized official for that LEA, and submitted as part of their proposed agreement.

Section E contains Application Transmittal Instructions for submitting your State-Flex application, as well as an Application Checklist to help you ensure you submit a complete application.

Section F contains an explanation of the procedures the Department will use for selecting the applicants that will enter into an agreement with the Secretary (Procedures for Selecting State-Flex Agreements).

Section G discusses the Estimated Public Reporting Burden for this application.

SECTION C

FEDERAL REGISTER NOTICES, PROGRAM STATUTE, AND EQUITABLE PARTICIPATION GUIDANCE

4000-01-U

DEPARTMENT OF EDUCATION

State Flexibility Program

Office of Elementary and Secondary Education, Department of Education.

Notice inviting applications for State Flexibility Authority.

PURPOSE OF THE PROGRAM: To provide State educational agencies (SEAs), and the local educational agencies (LEAs) with which they have performance agreements, with additional flexibility in order to assist them in meeting the State's definition of adequate yearly progress (AYP) and specific, measurable goals for improving student achievement and narrowing achievement gaps.

ELIGIBLE APPLICANTS: SEAs with AYP definitions approved by the Department or SEAs that submit an assurance that they will provide the Department with a State AYP definition that meets the requirements of section 1111(b)(2) of the Elementary and Secondary Education Act (ESEA) by the AYP deadline established by the Department.

Note: Hawaii, Puerto Rico, and the outlying areas are not eligible to apply for State-Flex because they do not have the minimum number of LEAs required for State-Flex authority.

If one of its LEAs has entered into a Local-Flex agreement with the Secretary, an SEA may subsequently seek State-Flex authority only if that LEA agrees to have its Local-Flex agreement submitted as one of the proposed performance agreements in the SEA's State-Flex application.

APPLICATIONS AVAILABLE: October 11, 2002.

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: January 17, 2003.

SUPPLEMENTARY INFORMATION: Sections 6141 through 6144 of the ESEA, as amended by the No Child Left Behind Act of 2001 (P.L. 107-110), authorize the Secretary of Education to grant State flexibility (State-Flex) authority to up to seven SEAs, permitting them to (1) consolidate certain Federal education funds that are provided for State-level activities and State administration and use those funds for any educational purpose authorized under the ESEA in order to meet the State's definition of AYP and advance the education priorities of the State and its LEAs; and (2) specify how LEAs in the State will use funds allocated under section 5112(a) of the ESEA (State Grants for Innovative Programs). In addition, an SEA with State-Flex authority must enter into performance agreements with not fewer than four, but no more than ten, LEAs (at least half of which must be high-poverty LEAs), giving those LEAs the flexibility to consolidate certain Federal education funds and to use those funds for any educational purpose permitted under the ESEA in order to meet the State's definition of AYP and specific, measurable goals for improving student achievement and narrowing achievement gaps.

The Secretary will select State-Flex SEAs on a competitive basis in accordance with the selection criteria contained in a notice published elsewhere in this issue of the Federal Register. The application requirements and a description of the application process are also provided in that notice.

The Secretary intends to select up to four SEAs for participation in State-Flex under this competition. In conducting this competition, the Department will review the quality of State-Flex plans, including the quality of the local performance agreements that are submitted as part of those plans. Based on that review, the Department will grant State-Flex authority to up to four SEAs. If an SEA selected for State-Flex authority has not yet had its AYP definition approved by the Department, that SEA will receive conditional State-Flex authority. An SEA with conditional State-Flex authority will not be able to exercise its State-Flex authority or implement any portion of its State-Flex plan (including the local performance agreements) unless the Department approves the SEA's AYP definition by March 31, 2003.

The Department will select the additional State-Flex SEAs in a subsequent competition.

FOR FURTHER INFORMATION CONTACT: Ms. Milagros Lanauze. Telephone: (202) 401-0039 or via Internet:

StateFlex@ed.gov

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339. Individuals with disabilities may obtain this notice in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed above.

APPLICATIONS: You may obtain a copy of the application on the Department's web site at: <http://www.ed.gov/GrantApps/#stateflex>

You may also obtain a copy of the application from the contact person identified under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document

You may view this document, as well as other Department of Education documents published in the Federal Register, in text or Adobe Portable Document Format (PDF) on the Internet at the following site:

www.ed.gov/legislation/FedRegister

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll-free, at 1-888-293-6498; or in the Washington DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the Federal Register. Free Internet access to the official version of the Federal Register and the Code of Federal Regulations is available on GPO access at:

www.access.gpo.gov/nara/index.html

PROGRAM AUTHORITY: Sections 6141 through 6144 of the ESEA, as amended by the No Child Left Behind Act of 2001 (P.L. 107-110).

Dated: October 8, 2002

_____/s/_____
Susan B. Neuman, Ed.D.
Assistant Secretary for
Elementary and Secondary Education.

4000-01-U

DEPARTMENT OF EDUCATION

State Flexibility Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of final application requirements, selection criteria, and competition schedule.

SUMMARY: The Secretary announces final application requirements, selection criteria, and the competition schedule for the State Flexibility (State-Flex) program.

EFFECTIVE DATE: November 12, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Milagros Lanauze. Telephone: (202) 401-0039 or via Internet:

StateFlex@ed.gov

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SUPPLEMENTARY INFORMATION:

On April 22, 2002, we published in the Federal Register (67 FR 19626-19629) a notice of proposed application requirements, selection criteria, and competition schedule for the State-Flex program, which is authorized under sections 6141 through 6144 of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2001 (Pub. L. 107-110). This notice announces final application requirements, selection criteria, and the competition schedule for the program.

Note: This notice does not solicit applications. A notice inviting applications under the State-Flex competition is published separately in this issue of the Federal Register.

Analysis of Comments and Changes

Four parties submitted various comments in response to the notice of proposed application requirements, selection criteria, and competition schedule.

Comment: Two commenters expressed concern about the competition schedule and suggested that the second State-Flex competition be held after the date by which States must submit their definitions of adequate yearly progress (AYP) to the Department. The commenters indicated that a later schedule would also give States sufficient time to prepare their State-Flex applications.

Response: We recognize that some States may need additional time to develop their State-Flex proposals. Changes: We are revising the competition schedule and will hold the second State-Flex competition no earlier than Spring 2003.

Comment: One commenter recommended that States not be required to submit their State definition of AYP in order to be considered eligible for State-Flex. Instead, the commenter suggested that in applying for State-Flex in the initial round of competition, States be permitted to submit an assurance that they will submit their AYP definition by January 2003.

Response: Implementation of the AYP requirements is fundamental to the State-Flex program. One of the primary purposes of the State-Flex program is to assist States and districts in meeting AYP. Given that the Department has not yet published final Title I AYP regulations, the Department will not require an SEA to submit its State AYP definition at the time it applies for State-Flex authority.

If the Department has not approved a State's AYP definition by the time it applies for State-Flex authority, an SEA may only be granted conditional State-Flex authority. The Department will not grant final approval of an SEA's State-Flex application unless the State submits its AYP definition by the AYP deadline established by the Department and the Department approves that definition.

Changes: The Department has revised the State-Flex application requirements. An SEA will not be required to submit its State AYP definition prior to or as part of its State-Flex application.

Instead, in its application, an SEA will be required to provide an assurance that it will submit the definition by the AYP deadline established by the Department.

In conducting this competition, the Department will review the quality of State-Flex plans, including the quality of the local performance agreements that are submitted as part of those plans. Based on that review, the Department will grant State-Flex authority to up to four SEAs. If an SEA selected for State-Flex authority has not yet had its AYP definition approved by the Department, that SEA will receive conditional State-Flex authority. An SEA with conditional State-Flex authority will not be able to exercise its State-Flex authority or implement any portion of its State-Flex plan (including the local performance agreements) unless the Department approves the SEA's AYP definition by March 31, 2003.

Comment: One commenter recommended that a State not be required to include in its State-Flex application the five-year performance agreements that the State proposes to enter into with its LEAs. Instead, the commenter suggested that the State be allowed to submit the format for the performance agreements along with LEA demographics and a signed assurance from participating LEAs that they will participate in the program and comply with its requirements.

Response: Section 6141 of ESEA specifically requires a State to submit, as part of its State-Flex application, the performance agreements that the State proposes to enter into with eligible LEAs.

Changes: None.

Comment: One commenter suggested that applicants be required to submit the following information to enable the Secretary to evaluate whether they are focusing on serving the needs of students most at risk of educational failure: (1) Data indicating the gap between low- and high-achieving students in the districts for which local performance agreements are proposed, as well as data indicating the achievement gap statewide; (2) The number and percentage of schools in each district that qualify for Title I schoolwide programs; (3) The amount of local education funds spent per pupil at Title I schools compared to the per-pupil spending at non-Title I schools; and (4) Any formula the State and districts would use to target consolidated Federal funds to students most at risk of education failure, as well as strategies to target State-level activities to address the achievement gap.

Response: We agree that there is a need for applicants to provide statewide and LEA student achievement data to enable the Department to assess whether State-Flex authority will be used to address the needs of students most at risk of educational failure. However, we do not believe that the additional information suggested by the commenter is necessary for us to evaluate adequately a State-Flex proposal. On the basis of the selection criteria and the revised application requirements for this competition, we will be able to focus State-Flex agreements on SEAs serving the needs of students most at risk of educational failure.

Changes: We will require applicants to submit statewide baseline academic data, as well as LEA student achievement profiles. We have clarified in the application requirements section of this notice the contents of local performance agreements, which include baseline academic data for those LEAs.

Comment: One commenter expressed concern that States may use the State-Flex program in a manner that undermines the parent involvement provisions contained in ESEA. The commenter suggested that the Secretary evaluate State-Flex applications based on the degree to which parent involvement requirements contained in ESEA are maintained, and also recommended that the Secretary require an assurance that States will provide parents and other stakeholders with notice and opportunity to comment on the State-Flex application.

Response: In the April 22, 2002 Federal Register notice, we did not include all of the statutory application requirements. We did not believe that it was necessary to seek public comments on some of the more explicit requirements included in the legislation. However, all of the statutory application requirements, including required assurances, are discussed in the application package.

In addition, we agree that the Department should evaluate applications, in part, based on the degree to which the SEA and LEAs with proposed performance agreements have included parents in the development of their proposals.

Changes: We have revised the selection criteria to include a factor relating to parental involvement in the development of the proposals.

Comment: One commenter argued that the Department incorrectly stated that the five-year period of State-Flex authority may be shortened or extended contingent on a State's compliance with the State-Flex requirements, and should delete this statement. The commenter suggested, instead, that the overall application process outline a process for reviewing and deciding issues of continued participation in State-Flex or renewal of State-Flex authority.

Response: The legislation states that the Secretary must, after providing notice and an opportunity for a hearing, promptly terminate a State-Flex agreement if an SEA fails to make adequate yearly progress for two consecutive years. The legislation also provides that, after providing notice and an opportunity for a hearing, the Secretary may terminate a State-Flex agreement if there is evidence that an SEA has failed to comply with the terms of the agreement. In addition, the legislation provides that the Secretary must renew a State's State-Flex authority if the State has met all the terms and requirements of the State-Flex program.

The Secretary does not believe that it is necessary to issue, at this time, additional guidance on the termination or renewal of a State-Flex agreement.

Changes: None.

Comment: One commenter suggested that the Secretary evaluate applications for State-Flex based on the degree to which States decline to direct how their LEAs use Title V, Part A funds, as the purpose of Title V, Part A is to support local reform efforts.

Response: The statute allows SEAs that are granted State-Flex authority to specify how all LEAs in the State will use their Title V, Part A funds. This is one of the benefits an SEA receives under its grant of State-Flex authority; discouraging State-Flex participants from taking full advantage of the flexibility afforded to them under the program would be inconsistent with the intent of the legislation.

Changes: None.

Comment: One commenter suggested that an SEA be required to include in its State-Flex proposal a description of how each proposed local performance agreement will meet the general purposes of the programs that the applicable LEAs would consolidate under their agreements.

Response: Although we did not intend to seek public comments on some of the more explicit requirements included in the legislation, we agree that this description should be part of the applications.

Changes: We have modified the application requirements to state expressly that each local performance agreement must, as part of its five-year proposal, include a description of how the LEA will meet the general purposes of the programs that are consolidated.

Comment: One commenter urged us to require each applicant to explain how it will continue to comply with all applicable civil rights requirements, and to include in its application a description of the accounting procedures and safeguards that it would employ to ensure proper disbursement of, and accounting for, Federal funds.

Response: In the April 22, 2002 Federal Register notice of proposed application requirements, selection criteria, and competition schedule (67 FR 19626-19629), we did not include all of the statutory application requirements. We did not believe that it was necessary to seek public comments on some of the more explicit requirements included in the legislation. However, all of the statutory application requirements, including those addressed in this notice, are discussed in the application package.

With respect to the comment on civil rights compliance, all applicants, as mandated by the legislation, will be required to submit an assurance that they are complying and will continue to comply with all applicable civil rights requirements. We will also require applicants to submit an assurance regarding fiscal control and fund accountability.

Changes: None.

I. APPLICATION REQUIREMENTS

Each State-Flex applicant must submit—

(a) An assurance that it will submit its State AYP definition required under section 1111(b)(2) of the ESEA by the AYP deadline established by the Department. Each SEA seeking a grant of State-Flex authority from the Secretary must provide, as part of its application, an

assurance that it will submit to the Department its State AYP definition by the AYP deadline established by the Department.

Note: If an SEA selected for State-Flex authority has not yet had its AYP definition approved by the Department, that SEA will receive conditional State-Flex authority. An SEA with conditional State-Flex authority will not be able to exercise its State-Flex authority or implement any portion of its State-Flex plan (including the local performance agreements) unless the Department approves the SEA's AYP definition by March 31, 2003.

(b) Statewide baseline academic data and LEA achievement profiles. Each SEA seeking to enter into a State-Flex agreement with the Secretary must provide, as part of its proposed agreement, statewide student achievement data for the most recent available school year, including data from assessments consistent with section 1111(b)(3) of the predecessor ESEA, as well as descriptions of achievement trends. To the extent possible, an SEA must provide data for both mathematics and reading or language arts, and the SEA must disaggregate the results by each major racial and ethnic group, by English proficiency status, by disability status, and by status as economically disadvantaged. (These are the categories, among others, by which an LEA will disaggregate data for determining AYP under section 1111(b)(2) of the reauthorized ESEA. Furthermore, these are the categories, among others, by which an LEA had to disaggregate data for reporting assessment results under section 1111(b)(3) of the predecessor ESEA.)

In addition to submitting baseline achievement data that are disaggregated, to the extent possible, by the categories noted above, SEAs may also submit baseline achievement data that are further disaggregated by gender and by migrant status, and baseline data on other academic indicators, such as grade-to-grade retention rates, student dropout rates, and percentages of students completing gifted and talented, advanced placement, and college preparatory courses. To the extent possible, the baseline data on other academic indicators should also be disaggregated.

The SEA must also provide a profile of student achievement trends in LEAs across the State, and indicate why it proposes to enter into agreements with particular LEAs rather than others.

(c) The SEA's strategies for consolidating funds, making AYP, narrowing achievement gaps, and advancing the education priorities of the State. Each SEA seeking State-Flex authority must submit a five-year plan that describes--

(i) How the SEA would consolidate and use State-level Federal funds from programs included in the scope of the State-Flex authority to assist the SEA in making AYP, narrowing achievement gaps, and advancing the education priorities of the State and the LEAs within the State;

(ii) How the strategies and goals in the LEA agreements support the State's strategies described in this proposal and will assist the State in making AYP and narrowing achievement gaps; and

(iii) The specific limitations, if any, that it would impose on the use of funds provided to LEAs in the State under section 5112(a) of the ESEA, and how these limitations would assist all LEAs in the State in making AYP and narrowing achievement gaps.

(d) Proposed performance agreements with LEAs. Each SEA seeking State-Flex authority must submit, as part of its application, five-year performance agreements that the SEA proposes to enter into with not fewer than four, and not more than ten, LEAs (at least half of which must be high-poverty LEAs). The SEA should indicate why it proposes to enter into agreements with these LEAs, rather than with other LEAs in the State.

Each proposed LEA agreement must include:

(i) Baseline academic data. For each LEA with which it proposes to enter into a local performance agreement, the SEA must provide, on behalf of that LEA, student achievement data for the most recent available school year, including data from assessments under section 1111(b)(3) of the predecessor ESEA, as well as descriptions of achievement trends. To the

extent possible, the SEA must provide data for that LEA for both mathematics and reading or language arts, and must disaggregate the results by each major racial and ethnic group, by English proficiency status, by disability status, and by status as economically disadvantaged. (These are the categories by which an LEA will disaggregate data for determining AYP under section 1111(b)(2) of the reauthorized ESEA. Furthermore, these are the categories, among others, by which an LEA had to disaggregate data for reporting assessment results under section 1111(b)(3) of the predecessor ESEA.)

In addition to submitting baseline achievement data that are disaggregated, to the extent possible, by the categories noted above, the SEA may also submit baseline achievement data on behalf of that LEA that are further disaggregated by gender and by migrant status, and baseline data on other academic indicators, such as grade-to-grade retention rates, student dropout rates, and percentages of students completing gifted and talented, advanced placement, and college preparatory courses. To the extent possible, the baseline data on other academic indicators should also be disaggregated.

(ii) Specific, measurable education goals. For each proposed local performance agreement, the SEA must submit, on behalf of that LEA, a five-year local performance agreement plan that contains specific, measurable educational goals, with annual objectives, that the LEA seeks to achieve by consolidating and using funds in accordance with the terms of its proposed agreement. The goals must relate to meeting AYP, raising student achievement, and narrowing achievement gaps relative to the baseline achievement data and other baseline data that are submitted.

(iii) Strategies for meeting its goals and the general purposes of the consolidated programs. For each proposed local performance agreement, the SEA must submit, on behalf of that LEA, a five-year plan that contains specific strategies for reaching its stated goals. In particular, the plan must describe how the LEA will consolidate and use funds received under Subpart 2 of Part A of Title II (Teacher and Principal Training and Recruitment); Subpart 1 of Part D of Title II (Enhancing Education Through Technology); Subpart 1 of Part A of Title IV (Safe and Drug-Free Schools and Communities); and Subpart 1 of Part A of Title V (Innovative Programs).

As part of each five-year plan, the SEA must also describe how the LEA will meet the general purposes of the programs that are consolidated under the local performance agreement. In particular, an SEA must describe how each proposed plan would—

(A) Improve teacher and principal quality and increase the number of highly qualified teachers in classrooms (Title II, Part A);

(B) Improve teaching and student academic achievement through the use of technology in schools (Title II, Part D);

(C) Support programs that prevent violence in and around schools and that prevent the illegal use of alcohol, tobacco, and drugs (Title IV, Part A); and

(D) Support local education reform efforts that are consistent with and support statewide education reform efforts (Title V, Part A).

II. SELECTION CRITERIA

The Secretary will use the following criteria to select the SEAs with which he will enter into State-Flex agreements:

(a) Identification of the Need for the State-Flex Authority and the Proposed Performance Agreements. (25 points) The Secretary considers the SEA's need for State-Flex authority, including the need for the performance agreements that the SEA proposes in its State-Flex application. In determining need, the Secretary considers the extent to which--

(i) The SEA's proposal identifies achievement gaps among different groups of students, particularly in each of the LEAs with which the SEA proposes to enter into a performance agreement.

(ii) The State-Flex authority and proposed performance agreements will address the needs of students most at risk of educational failure.

(iii) The LEAs that would enter into performance agreements with the SEA serve a substantial portion of the students in the State who are most at risk of educational failure.

(iv) Requirements in the Federal programs that the SEA and LEAs with performance agreements plan to consolidate create barriers to implementing specific State and local education reform strategies.

(b) Quality of SEA and LEA Strategies for Making Adequate Yearly Progress (AYP), Narrowing Achievement Gaps, and Enhancing Education Priorities. (30 points) The Secretary considers the quality of the strategies that the SEA will implement under its grant of State-Flex authority, including the quality of the strategies in each of the proposed performance agreements, for making AYP, narrowing achievement gaps, and for enhancing State and local education priorities. In determining the quality of these strategies, the Secretary considers the extent to which--

(i) The strategies that the SEA proposes for consolidating and using funds under the scope of the State-Flex authority and for directing how LEAs in the State will use funds under section 5112(a) of the ESEA will likely assist the State in meeting its definition of AYP, narrowing achievement gaps, and advancing its education priorities.

(ii) The performance agreements that the SEA proposes to enter into with LEAs in the State will likely assist the State in meeting its definition of AYP, narrowing achievement gaps, and advancing its education priorities.

(iii) The strategies in each of the proposed performance agreements, especially the strategies for consolidating and using funds under the scope of the agreements, will likely assist each affected LEA in meeting the State's definition of AYP and specific, measurable goals for improving student achievement and narrowing achievement gaps.

(iv) The extent to which the SEA and LEAs with proposed performance agreements included parents, especially parents of children most at risk of educational failure, in the development of the State-Flex proposal and proposed local performance agreements.

(v) The State-Flex proposal and each of the proposed performance agreements represent a coherent, sustained approach for meeting the purposes of the State-Flex program.

(vi) The timelines for implementing the strategies in the State-Flex proposal, including timelines in the proposed performance agreements, are reasonable.

(c) Quality of the Management Plans. (30 points) The Secretary considers the quality of the management plans that the SEA and affected LEAs would follow in implementing State-Flex activities. In reviewing the quality of the management plans, the Secretary considers the extent to which--

(i) The SEA will provide effective technical assistance and support to LEAs with performance agreements.

(ii) The SEA and each LEA with a performance agreement will use disaggregated student achievement data and data on other academic indicators to manage their proposed activities, to monitor their own progress on an ongoing basis, and to make appropriate adjustments to their implementation strategies.

(iii) The SEA will monitor LEA activities under each of the performance agreements, evaluate the effectiveness of each agreement, and propose modifications to LEA activities or to the agreements, as appropriate.

(d) Adequacy of the Resources. (15 points) The Secretary considers the adequacy of the resources for the grant of State-Flex authority and the proposed performance agreements. In considering the adequacy of the resources, the Secretary considers the extent to which--

(i) The funds that the SEA proposes to consolidate under the grant of State-Flex authority are adequate to support the strategies that it seeks to implement with these funds.

(ii) The funds that each LEA plans to consolidate under its respective performance agreement are adequate to support the strategies in its agreement.

(iii) The SEA will coordinate the activities supported with funds consolidated under its grant of State-Flex authority with activities funded with other resources to meet the purposes of the State-Flex initiative.

(iv) Each LEA with a performance agreement will coordinate the activities supported with funds consolidated under its agreement with activities funded with other resources to meet the purposes of the agreement.

(v) The costs that the SEA and affected LEAs will incur under the grant of State-Flex authority and the proposed performance agreements are reasonable in relationship to the goals that will be achieved.

III. APPLICATION PROCESS

The Secretary will conduct two separate State-Flex competitions. A notice inviting applications for the initial group of State-Flex SEAs is published elsewhere in this issue of the Federal Register. Depending on the number and quality of the applications submitted, the Secretary intends to select up to four SEAs to receive State-Flex authority during the initial competition.

In conducting this competition, the Department will review the quality of State-Flex plans, including the quality of the local performance agreements that are submitted as part of those plans. Based on that review, the Department will grant State-Flex authority to up to four SEAs. If an SEA selected for State-Flex authority has not yet had its AYP definition approved by the Department, that SEA will receive conditional State-Flex authority. An SEA with conditional State-Flex authority will not be able to exercise its State-Flex authority or implement any portion of its State-Flex plan (including the local performance agreements) unless the Department approves the SEA's AYP definition by March 31, 2003.

The remaining State-Flex slots will be awarded during a second State-Flex competition to be held no earlier than Spring 2003.

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PROGRAM AUTHORITY: Sections 6141 through 6144 of the ESEA, as amended by the No Child Left Behind Act of 2001 (P.L. 107-110).

Dated: October 8, 2002

_____/s/_____
Susan B. Neuman, Ed.D.
Assistant Secretary for
Elementary and Secondary Education.

PROGRAM STATUTE

TITLE VI, PART A

Subpart 3—State and Local Flexibility Demonstration

SEC. 6131. SHORT TITLE.

This subpart may be cited as the ‘State and Local Flexibility Demonstration Act’.

SEC. 6132. PURPOSE.

The purpose of this subpart is to create options for selected State educational agencies and local educational agencies—

(1) to improve the academic achievement of all students, and to focus the resources of the Federal Government upon such achievement;

(2) to improve teacher quality and subject matter mastery, especially in mathematics, reading, and science;

(3) to better empower parents, educators, administrators, and schools to effectively address the needs of their children and students;

(4) to give participating State educational agencies and local educational agencies greater flexibility in determining how to increase their students’ academic achievement and implement education reforms in their schools;

(5) to eliminate barriers to implementing effective State and local education reform, while preserving the goals of opportunity for all students and accountability for student progress;

(6) to hold participating State educational agencies and local educational agencies accountable for increasing the academic achievement of all students, especially disadvantaged students; and

(7) to narrow achievement gaps between the lowest and highest achieving groups of students so that no child is left behind.

SEC. 6133. GENERAL PROVISION.

For purposes of this subpart, any State that is one local educational agency shall be considered a State educational agency and not a local educational agency.

CHAPTER A—STATE FLEXIBILITY AUTHORITY

SEC. 6141. STATE FLEXIBILITY.

(a) FLEXIBILITY AUTHORITY.—Except as otherwise provided in this chapter, the Secretary shall, on a competitive basis, grant flexibility authority to not more than seven eligible State educational agencies, under which the agencies may consolidate and use funds in accordance with section 6142.

(b) DEFINITIONS.—In this chapter:

(1) ELIGIBLE STATE EDUCATIONAL AGENCY.—The term ‘eligible State educational agency’ means a State educational agency that—

- (A) submits an approvable application under subsection (c);
- and
- (B) proposes performance agreements—
 - (i) that shall be entered into with not fewer than 4, and not more than 10, local educational agencies;
 - (ii) not fewer than half of which shall be entered into with high-poverty local educational agencies; and
 - (iii) that require the local educational agencies described in clause (i) to align their use of consolidated funds under section 6152 with the State educational agency’s use of consolidated funds under section 6142.

(2) HIGH-POVERTY LOCAL EDUCATIONAL AGENCY.—The term ‘high-poverty local educational agency’ means a local educational agency for which 20 percent or more of the children who are age 5 through 17, and served by the local educational agency, are from families with incomes below the poverty line.

(c) STATE APPLICATIONS.—

(1) APPLICATIONS.—To be eligible to receive flexibility authority under this chapter, a State educational agency shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, including—

- (A) information demonstrating, to the satisfaction of the Secretary, that the grant of authority offers substantial promise of—
 - (i) assisting the State educational agency in making adequate yearly progress, as defined under section 1111(b)(2); and
 - (ii) aligning State and local reforms and assisting the local educational agencies that enter into performance

- agreements with the State educational agency under paragraph (2) in making such adequate yearly progress;
- (B) the performance agreements that the State educational agency proposes to enter into with eligible local educational agencies under paragraph (2);
- (C) information demonstrating that the State educational agency has consulted with and involved parents, representatives of local educational agencies, and other educators in the development of the terms of the grant of authority;
- (D) a provision specifying that the grant of flexibility authority shall be for a term of not more than 5 years;
- (E) a list of the programs described in section 6142(b) that are included in the scope of the grant of authority;
- (F) a provision specifying that no requirements of any program described in section 6142(b) and included by a State educational agency in the scope of the grant of authority shall apply to that agency, except as otherwise provided in this chapter;
- (G) a 5-year plan describing how the State educational agency intends to consolidate and use the funds from programs included in the scope of the grant of authority, for any educational purpose authorized under this Act, in order to make adequate yearly progress and advance the education priorities of the State and the local educational agencies with which the State educational agency enters into performance agreements;
- (H) an assurance that the State educational agency will provide parents, teachers, and representatives of local educational agencies and schools with notice and an opportunity to comment on the proposed terms of the grant of authority;
- (I) an assurance that the State educational agency, and the local educational agencies with which the State educational agency enters into performance agreements, will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds consolidated and used under the grant of authority;
- (J) an assurance that the State educational agency, and the local educational agencies with which the State educational agency enters into performance agreements, will meet the requirements of all applicable Federal civil rights laws in carrying out the grant of authority, including consolidating and using funds under the grant of authority;
- (K) an assurance that, in consolidating and using funds under the grant of authority—
- (i) the State educational agency, and the local educational agencies with which the State educational agency enters into performance agreements, will provide for

the equitable participation of students and professional staff in private schools consistent with section 9501; and

(ii) that sections 9502, 9503, and 9504 shall apply to all services and assistance provided with such funds in the same manner as such sections apply to services and assistance provided in accordance with section 9501;

(L) an assurance that the State educational agency will, for the duration of the grant of authority, use funds consolidated under section 6142 only to supplement the amount of funds that would, in the absence of those Federal funds, be made available from non-Federal sources for the education of students participating in programs assisted with the consolidated funds, and not to supplant those funds; and

(M) an assurance that the State educational agency shall, not later than 1 year after the date on which the Secretary makes the grant of authority, and annually thereafter during the term of the grant of authority, disseminate widely to parents and the general public, transmit to the Secretary, distribute to print and broadcast media, and post on the Internet, a report, which shall include a detailed description of how the State educational agency, and the local educational agencies with which the State educational agency enters into performance agreements, used the funds consolidated under the grant of authority to make adequate yearly progress and advance the education priorities of the State and local educational agencies in the State.

(2) PROPOSED PERFORMANCE AGREEMENTS WITH LOCAL EDUCATIONAL AGENCIES.—

(A) IN GENERAL.—A State educational agency that wishes to receive flexibility authority under this subpart shall propose performance agreements that meet the requirements of clauses (i) and (ii) of subsection (b)(1)(B) (subject to approval of the application or amendment involved under subsection (d) or (e)).

(B) PERFORMANCE AGREEMENTS.—Each proposed performance agreement with a local educational agency shall—

(i) contain plans for the local educational agency to consolidate and use funds in accordance with section 6152, for activities that are aligned with the State educational agency's plan described in paragraph (1)(G);

(ii) be subject to the requirements of chapter B relating to agreements between the Secretary and a local educational agency, except—

(I) that, as appropriate, references in that chapter to the Secretary shall be deemed to be references to the State educational agency; and

(II) as otherwise provided in this chapter; and

(iii) contain an assurance that the local educational agency will, for the duration of the grant of authority, use funds consolidated under section 6152 only to supplement the amount of funds that would, in the absence of those Federal funds, be made available from non-Federal sources for the education of students participating in programs assisted with the consolidated funds, and not to supplant those funds.

(d) APPROVAL AND SELECTION.—The Secretary shall—

(1) establish a peer review process to assist in the review of proposed State applications under this section; and

(2) appoint individuals to participate in the peer review process who are—

(A) representative of parents, teachers, State educational agencies, and local educational agencies; and

(B) familiar with educational standards, assessments, accountability, curricula, instruction, and staff development, and other diverse educational needs of students.

(e) AMENDMENT TO GRANT OF AUTHORITY.—

(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall amend the grant of flexibility authority made to a State educational agency under this chapter, in each of the following circumstances:

(A) REDUCTION IN SCOPE OF THE GRANT OF AUTHORITY.—Not later than 1 year after receiving a grant of flexibility authority, the State educational agency seeks to amend the grant of authority to remove from the scope of the grant of authority any program described in section 6142(b).

(B) EXPANSION OF SCOPE OF THE GRANT OF AUTHORITY.—Not later than 1 year after receiving a grant of flexibility authority, the State educational agency seeks to amend the grant of authority to include in the scope of the grant of authority any additional program described in section 6142(b) or any additional achievement indicators for which the State will be held accountable.

(C) CHANGES WITH RESPECT TO NUMBER OF PERFORMANCE AGREEMENTS.—The State educational agency seeks to amend the grant of authority to include or remove performance agreements that the State educational agency proposes to enter into with eligible local educational agencies, except that in no case may the State educational agency enter into performance agreements that do not meet the requirements of clauses (i) and (ii) of subsection (b)(1)(B).

(2) APPROVAL AND DISAPPROVAL.—

(A) DEEMED APPROVAL.—A proposed amendment to a grant of flexibility authority submitted by a State educational agency pursuant to paragraph (1) shall be deemed to be approved by the Secretary unless the Secretary makes a written determination, prior to the expiration of the 120-day period beginning on the date on which the Secretary received the proposed amendment, that the proposed amendment is not in compliance with this chapter.

(B) DISAPPROVAL.—The Secretary shall not finally disapprove the proposed amendment, except after giving the State educational agency notice and an opportunity for a hearing.

(C) NOTIFICATION.—If the Secretary finds that the proposed amendment is not in compliance, in whole or in part, with this chapter, the Secretary shall—

(i) give the State educational agency notice and an opportunity for a hearing; and

(ii) notify the State educational agency of the finding of noncompliance and, in such notification, shall—

(I) cite the specific provisions in the proposed amendment that are not in compliance; and

(II) request additional information, only as to the noncompliant provisions, needed to make the proposed amendment compliant.

(D) RESPONSE.—If the State educational agency responds to the Secretary's notification described in subparagraph (C)(ii) during the 45-day period beginning on the date on which the agency received the notification, and resubmits the proposed amendment with the requested information described in subparagraph (C)(ii)(II), the Secretary shall approve or disapprove such proposed amendment prior to the later of—

(i) the expiration of the 45-day period beginning on the date on which the proposed amendment is resubmitted; or

(ii) the expiration of the 120-day period described in subparagraph (A).

(E) FAILURE TO RESPOND.—If the State educational agency does not respond to the Secretary's notification described in subparagraph (C)(ii) during the 45-day period beginning on the date on which the agency received the notification, such proposed amendment shall be deemed to be disapproved.

(3) TREATMENT OF PROGRAM FUNDS WITHDRAWN FROM GRANT OF AUTHORITY.—Beginning on the effective date of an amendment executed under paragraph (1)(A), each program requirement of each program removed from the scope of a grant of authority shall apply to the use of funds made available under the program by the State educational agency and each local educational agency with which the State educational agency has a performance agreement.

SEC. 6142. CONSOLIDATION AND USE OF FUNDS.

(a) IN GENERAL.—

(1) **AUTHORITY.**—Under a grant of flexibility authority made under this chapter, a State educational agency may consolidate Federal funds described in subsection (b) and made available to the agency, and use such funds for any educational purpose authorized under this Act.

(2) **PROGRAM REQUIREMENTS.**—Except as otherwise provided in this chapter, a State educational agency may use funds under paragraph (1) notwithstanding the program requirements of the program under which the funds were made available to the State.

(b) ELIGIBLE FUNDS AND PROGRAMS.—

(1) **FUNDS.**—The funds described in this subsection are funds, for State-level activities and State administration, that are described in the following provisions:

(A) Section 1004.

(B) Paragraphs (4) and (5) of section 1202(d).

(C) Section 2113(a)(3).

(D) Section 2412(a)(1).

(E) Subsections (a) (with the agreement of the Governor),

(b)(2), and (c)(1) of section 4112.

(F) Paragraphs (2) and (3) of section 4202(c).

(G) Section 5112(b).

(2) **PROGRAMS.**—The programs described in this subsection are the programs authorized to be carried out with funds described in paragraph (1).

(c) **SPECIAL RULE.**—A State educational agency that receives a grant of flexibility authority under this chapter—

(1) shall ensure that the funds described in section 5112(a) are allocated to local educational agencies in the State in accordance with section 5112(a); but

(2) may specify how the local educational agencies shall use the allocated funds.

SEC. 6143. PERFORMANCE REVIEW AND PENALTIES.

(a) MIDTERM REVIEW.—

(1) **FAILURE TO MAKE ADEQUATE YEARLY PROGRESS.**—If, during the term of a grant of flexibility authority under this chapter, a State educational agency fails to make adequate yearly progress for 2

consecutive years, the Secretary shall, after providing notice and an opportunity for a hearing, terminate the grant of authority promptly.

(2) NONCOMPLIANCE.—The Secretary may, after providing notice and an opportunity for a hearing (including the opportunity to provide evidence as described in paragraph (3)), terminate a grant of flexibility authority for a State if there is evidence that the State educational agency involved has failed to comply with the terms of the grant of authority.

(3) EVIDENCE.—If a State educational agency believes that a determination of the Secretary under this subsection is in error for statistical or other substantive reasons, the State educational agency may provide supporting evidence to the Secretary, and the Secretary shall consider that evidence before making a final termination determination under this subsection.

(b) FINAL REVIEW.—

(1) IN GENERAL.—If, at the end of the 5-year term of a grant of flexibility authority made under this chapter, the State educational agency has not met the requirements described in section 6141(c), the Secretary may not renew the grant of flexibility authority under section 6144.

(2) COMPLIANCE.—Beginning on the date on which such term ends, the State educational agency, and the local educational agencies with which the State educational agency has entered into performance agreements, shall be required to comply with each of the program requirements in effect on such date for each program that was included in the grant of authority.

SEC. 6144. RENEWAL OF GRANT OF FLEXIBILITY AUTHORITY.

(a) IN GENERAL.—Except as provided in section 6143 and in accordance with this section, if a State educational agency has met, by the end of the original 5-year term of a grant of flexibility authority under this chapter, the requirements described in section 6141(c), the Secretary shall renew a grant of flexibility authority for one additional 5-year term.

(b) RENEWAL.—The Secretary may not renew a grant of flexibility authority under this chapter unless, not later than 6 months before the end of the original term of the grant of authority, the State educational agency seeking the renewal notifies the Secretary, and the local educational agencies with which the State educational agency has entered into performance agreements, of the agency's intention to renew the grant of authority.

(c) EFFECTIVE DATE.—A renewal under this section shall be effective on the later of—

(1) the expiration of the original term of the grant of authority; or

(2) the date on which the State educational agency seeking the renewal provides to the Secretary all data required for the application described in section 6141(c).

CHAPTER B—LOCAL FLEXIBILITY DEMONSTRATION

SEC. 6151. LOCAL FLEXIBILITY DEMONSTRATION AGREEMENTS.

(a) **AUTHORITY.**—Except as otherwise provided in this chapter, the Secretary shall, on a competitive basis, enter into local flexibility demonstration agreements—

(1) with local educational agencies that submit approvable proposed agreements under subsection (c) and that are selected under subsection (b); and

(2) under which those agencies may consolidate and use funds in accordance with section 6152.

(b) **SELECTION OF LOCAL EDUCATIONAL AGENCIES.**—

(1) **IN GENERAL.**—Subject to paragraph (2), the Secretary shall enter into local flexibility demonstration agreements under this chapter with not more than 80 local educational agencies. Each local educational agency shall be selected on a competitive basis from among those local educational agencies that—

(A) submit a proposed local flexibility demonstration agreement under subsection (c) to the Secretary and demonstrate, to the satisfaction of the Secretary, that the agreement—

(i) has a substantial promise of assisting the local educational agency in meeting the State’s definition of adequate yearly progress, advancing the education priorities of the local educational agency, meeting the general purposes of the programs included under this chapter and the purposes of this part, improving student achievement, and narrowing achievement gaps in accordance with section 1111(b);

(ii) meets the requirements of this chapter; and

(iii) contains a plan to consolidate and use funds in accordance with section 6152 in order to meet the State’s definition of adequate yearly progress and the local educational agency’s specific, measurable goals for improving student achievement and narrowing achievement gaps; and

(B) have consulted and involved parents and other educators in the development of the proposed local flexibility demonstration agreement.

(2) **GEOGRAPHIC DISTRIBUTION.**—

(A) INITIAL AGREEMENTS.—The Secretary may enter into not more than three local flexibility demonstration agreements under this chapter with local educational agencies in each State that does not have a grant of flexibility authority under chapter A.

(B) URBAN AND RURAL AREAS.—If more than three local educational agencies in a State submit approvable local flexibility demonstration agreements under this chapter, the Secretary shall select local educational agencies with which to enter into such agreements in a manner that ensures an equitable distribution among such agencies serving urban and rural areas.

(C) PRIORITY OF STATES TO ENTER INTO STATE FLEXIBILITY DEMONSTRATION AGREEMENTS.—

Notwithstanding any other provision of this part, a local educational agency may not seek to enter into a local flexibility demonstration agreement under this chapter if that agency is located in a State for which the State educational agency—

(i) has, not later than 4 months after the date of enactment of the No Child Left Behind Act of 2001, notified the Secretary of its intent to apply for a grant of flexibility authority under chapter A and, within such period of time as the Secretary may establish, is provided with such authority by the Secretary; or

(ii) has, at any time after such period, been granted flexibility authority under chapter A.

(c) REQUIRED TERMS OF LOCAL FLEXIBILITY DEMONSTRATION AGREEMENT.—Each local flexibility demonstration agreement entered into with the Secretary under this chapter shall contain each of the following terms:

(1) DURATION.—The local flexibility demonstration agreement shall be for a term of 5 years.

(2) APPLICATION OF PROGRAM REQUIREMENTS.—The local flexibility demonstration agreement shall provide that no requirements of any program described in section 6152 and included by a local educational agency in the scope of its agreement shall apply to that agency, except as otherwise provided in this chapter.

(3) LIST OF PROGRAMS.—The local flexibility demonstration agreement shall list which of the programs described in section 6152 are included in the scope of the agreement.

(4) USE OF FUNDS TO IMPROVE STUDENT ACHIEVEMENT.—The local flexibility demonstration agreement shall contain a 5-year plan describing how the local educational agency intends to consolidate and use the funds from programs included in the scope of the agreement for any educational purpose authorized under this Act to advance the education priorities of the local educational agency, meet the general purposes of the included programs, improve student achievement, and narrow achievement gaps in accordance with section 1111(b).

(5) LOCAL INPUT.—The local flexibility demonstration agreement shall contain an assurance that the local educational agency will provide parents, teachers, and representatives of schools with notice and an opportunity to comment on the proposed terms of the local flexibility demonstration agreement.

(6) FISCAL RESPONSIBILITIES.—The local flexibility demonstration agreement shall contain an assurance that the local educational agency will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds consolidated and used under the agreement.

(7) CIVIL RIGHTS.—The local flexibility demonstration agreement shall contain an assurance that the local educational agency will meet the requirements of all applicable Federal civil rights laws in carrying out the agreement and in consolidating and using the funds under the agreement.

(8) PRIVATE SCHOOL PARTICIPATION.—The local flexibility demonstration agreement shall contain an assurance that the local educational agency agrees that in consolidating and using funds under the agreement—

(A) the local educational agency, will provide for the equitable participation of students and professional staff in private schools consistent with section 9501; and

(B) that sections 9502, 9503, and 9504 shall apply to all services and assistance provided with such funds in the same manner as such sections apply to services and assistance provided in accordance with section 9501.

(9) SUPPLANTING.—The local flexibility demonstration agreement shall contain an assurance that the local educational agency will, for the duration of the grant of authority, use funds consolidated under section 6152 only to supplement the amount of funds that would, in the absence of those Federal funds, be made available from non-Federal sources for the education of students participating in programs assisted with the consolidated funds, and not to supplant those funds.

(10) ANNUAL REPORTS.—The local flexibility demonstration agreement shall contain an assurance that the local educational agency shall, not later than 1 year after the date on which the Secretary enters into the agreement, and annually thereafter during the term of the agreement, disseminate widely to parents and the general public, transmit to the Secretary, and the State educational agency for the State in which the local educational agency is located, distribute to print and broadcast media, and post on the Internet, a report that includes a detailed description of how the local educational agency used the funds consolidated under the agreement to improve student academic achievement and reduce achievement gaps.

(d) PEER REVIEW.—The Secretary shall—

(1) establish a peer review process to assist in the review of proposed local flexibility demonstration agreements under this chapter; and

(2) appoint individuals to the peer review process who are representative of parents, teachers, State educational agencies, and local educational agencies, and who are familiar with educational standards, assessments, accountability, curriculum, instruction and staff development, and other diverse educational needs of students.

(e) AMENDMENT TO PERFORMANCE AGREEMENT.—

(1) IN GENERAL.—In each of the following circumstances, the Secretary shall amend a local flexibility demonstration agreement entered into with a local educational agency under this chapter:

(A) REDUCTION IN SCOPE OF LOCAL FLEXIBILITY DEMONSTRATION AGREEMENT.—Not later than 1 year after entering into a local flexibility demonstration agreement, the local educational agency seeks to amend the agreement to remove from the scope any program described in section 6152.

(B) EXPANSION OF SCOPE OF LOCAL FLEXIBILITY DEMONSTRATION AGREEMENT.—Not later than 1 year after entering into the local flexibility demonstration agreement, a local educational agency seeks to amend the agreement to include in its scope any additional program described in section 6251 or any additional achievement indicators for which the local educational agency will be held accountable.

(2) APPROVAL AND DISAPPROVAL.—

(A) DEEMED APPROVAL.—A proposed amendment to a local flexibility demonstration agreement pursuant to paragraph (1) shall be deemed to be approved by the Secretary unless the Secretary makes a written determination, prior to the expiration of the 120-day period beginning on the date on which the Secretary received the proposed amendment, that the proposed amendment is not in compliance with this chapter.

(B) DISAPPROVAL.—The Secretary shall not finally disapprove the proposed amendment, except after giving the local educational agency notice and an opportunity for a hearing.

(C) NOTIFICATION.—If the Secretary finds that the proposed amendment is not in compliance, in whole or in part, with this chapter, the Secretary shall—

(i) give the local educational agency notice and an opportunity for a hearing; and

(ii) notify the local educational agency of the finding of noncompliance and, in such notification, shall—

(I) cite the specific provisions in the proposed amendment that are not in compliance; and

(II) request additional information, only as to the noncompliant provisions, needed to make the proposed amendment compliant.

(D) RESPONSE.—If the local educational agency responds to the Secretary's notification described in subparagraph (C)(ii) during the 45-day period beginning on the date on which the agency received the notification, and resubmits the proposed amendment with the requested information described in subparagraph (C)(ii)(II), the Secretary shall approve or disapprove such proposed amendment prior to the later of—

(i) the expiration of the 45-day period beginning on the date on which the proposed amendment is resubmitted; or

(ii) the expiration of the 120-day period described in subparagraph (A).

(E) FAILURE TO RESPOND.—If the local educational agency does not respond to the Secretary's notification described in subparagraph (C)(ii) during the 45-day period beginning on the date on which the agency received the notification, such proposed amendment shall be deemed to be disapproved.

(3) TREATMENT OF PROGRAM FUNDS WITHDRAWN FROM AGREEMENT.—Beginning on the effective date of an amendment executed under paragraph (1)(A), each program requirement of each program removed from the scope of a local flexibility demonstration agreement shall apply to the use of funds made available under the program by the local educational agency.

SEC. 6152. CONSOLIDATION AND USE OF FUNDS.

(a) IN GENERAL.—

(1) AUTHORITY.—Under a local flexibility demonstration agreement entered into under this chapter, a local educational agency may consolidate Federal funds made available to the agency under the provisions listed in subsection (b) and use such funds for any educational purpose permitted under this Act.

(2) PROGRAM REQUIREMENTS.—Except as otherwise provided in this chapter, a local educational agency may use funds under paragraph (1) notwithstanding the program requirements of the program under which the funds were made available to the agency.

(b) ELIGIBLE PROGRAMS.—Program funds made available to local educational agencies on the basis of a formula under the following provisions may be consolidated and used under subsection (a):

(1) Subpart 2 of part A of title II.

(2) Subpart 1 of part D of title II.

- (3) Subpart 1 of part A of title IV.
- (4) Subpart 1 of part A of title V.

SEC. 6153. LIMITATIONS ON ADMINISTRATIVE EXPENDITURES.

Each local educational agency that has entered into a local flexibility demonstration agreement with the Secretary under this chapter may use for administrative purposes not more than 4 percent of the total amount of funds allocated to the agency under the programs included in the scope of the agreement.

SEC. 6154. PERFORMANCE REVIEW AND PENALTIES.

(a) MIDTERM REVIEW.—

(1) FAILURE TO MAKE ADEQUATE YEARLY PROGRESS.—If, during the term of a local flexibility demonstration agreement, a local educational agency fails to make adequate yearly progress for 2 consecutive years, the Secretary shall, after notice and opportunity for a hearing, promptly terminate the agreement.

(2) NONCOMPLIANCE.—The Secretary may, after providing notice and an opportunity for a hearing (including the opportunity to provide information as provided for in paragraph (3)), terminate a local flexibility demonstration agreement under this chapter if there is evidence that the local educational agency has failed to comply with the terms of the agreement.

(3) EVIDENCE.—If a local educational agency believes that the Secretary's determination under this subsection is in error for statistical or other substantive reasons, the local educational agency may provide supporting evidence to the Secretary, and the Secretary shall consider that evidence before making a final early termination determination.

(b) FINAL REVIEW.—If, at the end of the 5-year term of a local flexibility demonstration agreement entered into under this chapter, the local educational agency has not met the requirements described in section 6151(c), the Secretary may not renew the agreement under section 6155 and, beginning on the date on which such term ends, the local educational agency shall be required to comply with each of the program requirements in effect on such date for each program included in the local flexibility demonstration agreement.

SEC. 6155. RENEWAL OF LOCAL FLEXIBILITY DEMONSTRATION AGREEMENT.

(a) IN GENERAL.—Except as provided in section 6154 and in accordance with this section, the Secretary shall renew for one additional 5-year term a local flexibility demonstration agreement entered into under this chapter if the local educational agency has met, by the end of the original term of the agreement, the requirements described in section 6151(c).

(b) NOTIFICATION.—The Secretary may not renew a local flexibility demonstration agreement under this chapter unless, not less than 6 months before the end of the original term of the agreement, the local educational agency seeking the renewal notifies the Secretary of its intention to renew.

(c) EFFECTIVE DATE.—A renewal under this section shall be effective at the end of the original term of the agreement or on the date on which the local educational agency seeking renewal provides to the Secretary all data required under the agreement, whichever is later.

SEC. 6156. REPORTS.

(a) TRANSMITTAL TO CONGRESS.—Not later than 60 days after the Secretary receives a report described in section 6151(b)(10), the Secretary shall make the report available to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate.

(b) LIMITATION.—A State in which a local educational agency that has a local flexibility demonstration agreement is located may not require such local educational agency to provide any application information with respect to the programs included within the scope of that agreement other than that information that is required to be included in the report described in section 6151(b)(10).

GENERAL EQUITABLE PARTICIPATION GUIDANCE

Under section 6141(c)(1)(K) of the reauthorized Elementary and Secondary Education Act (ESEA), in consolidating and using funds under a grant of State-Flex authority, an SEA and the LEAs with which the SEA enters into performance agreements must provide for the equitable participation of private school students and staff consistent with section 9501. Sections 9502, 9503, and 9504 apply to all services and assistance provided with the consolidated funds.

While an SEA with State-Flex authority may direct how its LEAs will use the funds that they receive under Part A of Title V, it may direct how LEAs may use these funds for the benefit of private school teachers and students only after the SEA engages in timely and meaning consultation with officials representing the full spectrum of private schools in the State. The SEA may choose not to direct how LEAs will use these funds for private school students and teachers even if it directs how LEAs will use funds under Part A of Title V for public school students. In that event, the LEA has the responsibility of engaging in timely and meaningful consultation with private school officials.

To the extent that the SEA consolidates funds under the following programs and uses the consolidated funds for non-administrative educational services and benefits, the SEA must provide for the equitable participation of private school children and teachers:

- Subpart 1 of Part B of Title I (Reading First)
- Part A of Title II (Teacher and Principal Training and Recruitment, with professional development limitation)
- Part D of Title II (Ed Tech)
- Part A of Title IV (Safe and Drug-Free Schools and Communities)
- Part D of Title IV (21st Century Community Learning Centers)
- Part A of Title V (Innovative Programs) (See the provision in section 5142(a) regarding equitable participation with respect to instructional or training programs funded by the SEA from Title V, Part A funds made available for SEA use.)

Once the SEA has made a decision to consolidate funds and has determined which portion of the consolidated funds would be used for administrative purposes, the SEA determines which portion of the remainder – i.e., the consolidated funds used for educational services and benefits – must be used for the benefit of private school children and teachers. This determination may be based on the proportion of elementary and secondary school students in private schools in the State.

An LEA that enters into a performance agreement with its SEA in a State-Flex State is subject to the same equitable participation requirements as an LEA that

enters into a Local-Flex agreement with the Secretary. That is, an LEA must first determine the amount of funds that are generated by private school students under the programs that the LEA plans to consolidate. (See the special provision in section 9501(b)(3) regarding Part A of Title II.) The LEA must reserve these funds for the benefit of private school students and teachers. Thus, the total amount of funding that is used for the benefit of private school students and teachers is not affected by an LEA's performance agreement with its SEA.

An LEA must engage in timely and meaningful consultation with private school officials to determine how these reserved funds should be expended for the benefit of private school students and teachers. These funds may be used for an authorized activity under any ESEA program in which private school students and teachers are eligible to receive benefits, and need not be the same activities or programs for which an LEA uses its consolidated funds for public schools.

SECTION D

PREPARING AN APPLICATION

INTRODUCTION TO THE STATE FLEXIBILITY AUTHORITY DEMONSTRATION PROGRAM

THE CLOSING DATE FOR THIS COMPETITION IS JANUARY 17, 2003.

Under the State-Flex program, the Secretary will grant State-Flexibility Authority (State-Flex) to up to seven State educational agencies (SEAs) that submit high-quality State-Flex proposals. The Secretary intends to select up to 4 SEAs for State-Flex authority during this initial competition.

Each State-Flex SEA--

(1) may consolidate certain Federal formula funds reserved for State administration and State-level activities for any educational purpose authorized under the ESEA to assist the SEA, and the local educational agencies (LEAs) with which it enters into performance agreements, in making adequate yearly progress and narrowing achievement gaps;

(2) must enter into performance agreements with four to ten LEAs in the State (half of which must be high poverty LEAs), permitting those LEAs to consolidate certain Federal funds and to use those funds for any ESEA purpose consistent with the SEA's State-Flex plan; and

(2) may specify how all of its LEAs will use the funds that they receive under Part A of Title V (Innovative Program funds). The SEA must comply, however, with the normal requirements in Title V for allocating those funds.

The SEA proposal, if approved, would form the basis of the grant of State-Flex authority.

The legislation permits participating SEAs to consolidate funds for State-level activities and State administration under the following programs:

- Section 1004 (Improving the Academic Achievement of Disadvantaged Children)
- Paragraphs (4) and (5) of section 1202(d) (Reading First)
- Section 2113(a)(3) (Teacher and Principal Training and Recruitment)
- Section 2412(a)(1) (Enhancing Education through Technology)
- Subsection (a) of section 4112 (Safe and Drug-Free Schools and Communities Governor's funds, with agreement of the Governor)
- Subsection (b)(2) and (c)(1) of section 4112 (Safe and Drug-Free Schools and Communities SEA funds)
- Paragraphs (2) and (3) of section 4202(c) (21st Century Community Learning Centers)
- Section 5112(b) (Innovative Programs)

The consolidated SEA funds may be used for any authorized ESEA activity, consistent with the purposes of the State-Flex program and the SEA's grant of State-Flex authority, in order to assist the SEA in meeting the State's definition of AYP and in narrowing achievement gaps.

In addition, the legislation permits the LEAs with which the State has entered into local performance agreements to consolidate formula grant funds under the following programs:

- Subpart 2 of Part A of Title II (Teacher and Principal Training and Recruitment)
- Subpart 1 of Part D of Title II (Enhancing Education Through Technology)
- Subpart 1 of Part A of Title IV (Safe and Drug-Free Schools and Communities)
- Subpart 1 of Part A of Title V (Innovative Programs).

The consolidated LEA funds may be used for any authorized ESEA activity, consistent with the purposes of the State-Flex program and the SEA's State-Flex agreement, in order to assist the LEA in meeting the State's definition of AYP and in narrowing achievement gaps. The LEA must still meet the general purposes of the programs included in the consolidation.

The Secretary will select participating SEAs on a competitive basis using a peer review process.

DISCUSSION OF APPLICATION REQUIREMENTS

To be considered for participation in the State-Flex program, you must submit a five-year State-Flex proposal that includes the following information:

- (1) A completed SEA cover page. (The cover page form is provided on page D-12 of this application package.)
- (2) The SEA Consolidated Funds Form. (This form is provided on page D-13 of this application package.)

(3) Assurances

You must provide the assurances contained on pages D-14 and D-15 of this application package. (One of these assurances relates to compliance with the equitable participation requirements. Guidance on these requirements is provided in Section C of this package.)

(4) A Narrative

You must provide a narrative that addresses the application requirements and selection criteria, and contains the following information:

(a) Statewide baseline academic data and LEA achievement profiles

Your State-Flex proposal must include statewide student achievement data for the most recent available school year, including data from assessments consistent with section 1111(b)(3) of the predecessor ESEA, as well as descriptions of achievement trends. To the extent possible, you must provide data for both mathematics and reading or language arts, and you must disaggregate the results by each major racial and ethnic group, by English proficiency status, by disability status, and by status as economically disadvantaged.

You may also include in your proposal statewide baseline achievement data that are further disaggregated by gender and by migrant status, or baseline data on other academic indicators, such as grade-to-grade retention rates, student dropout rates, and percentages of students completing gifted and talented, advanced placement, and college preparatory courses. To the extent possible, the baseline data on other academic indicators should also be disaggregated.

In addition, your State-Flex proposal must include a profile of student achievement trends in LEAs across your State. In discussing these data, you must also discuss why your State proposes to enter into local performance agreements with the LEAs you have chosen, rather than entering into agreements with other LEAs in your State.

(b) The SEA's strategies for consolidating funds, making adequate yearly progress, and advancing the education priorities of the State.

(i) Plan for the consolidation and use of State-level funds

You must propose a five-year plan that shows how your State will consolidate and use State-level funds from the programs the State plans to include in the scope of its State-Flex authority. The plan must show how this consolidation and uses of funds will assist the SEA in making AYP and in advancing the education priorities of the State and the LEAs within the State.

In your plan, you should also include a five-year general budget outline for the activities that you are proposing to support. The budget outline should show both Federal and other resources that will be used to support these activities, and it should include a brief narrative rationale. In addition, your submission must include specific information on the amount of FY2002 funds that you propose to consolidate under the agreement. See SEA Consolidated Funds Form on page D-13.

(ii) Description of how local performance agreements support the State-Flex proposal

Your proposal must discuss how the strategies and goals in each local performance agreement will assist the State in meeting AYP and narrowing achievement gaps.

(iii) Limitations on the use of Title V funds by LEAs

Your proposal must discuss any specific limitations that your State would impose on the use of funds provided to LEAs under Title V, Part A, Section 5112 (a) (Innovative Programs) of the ESEA. The proposal must also discuss how these limitations will assist LEAs in the State in making AYP.

(c) Proposed performance agreements with LEAs

Your application must include each of the proposed five-year local performance agreements required by the legislation. To receive State-Flex authority, you must enter into local performance agreements with 4 to 10 LEAs in your State. At least half of the agreements must be with high-poverty LEAs. (A high-poverty LEA is one for which 20% or more of the children aged 5 through 17 and served the LEA are from families with incomes below the poverty line. Note: Poverty line data is based on Census poverty data, and is not the same as free and reduced price lunch data).

Each proposed local performance agreement must include:

(i) Baseline academic data

Each proposed local performance agreement must include LEA student achievement data for the most recent available school year, including data from assessments consistent with section 1111(b)(3) of the predecessor ESEA, as well as descriptions of achievement trends. To the extent possible, there should be data for both mathematics and reading or language arts, and you must disaggregate the results by each major racial and ethnic group, by English proficiency status, by disability status, and by status as economically disadvantaged.

In addition to including baseline achievement data that are disaggregated, to the extent possible, by the categories noted above, each proposed local performance agreement may include LEA baseline achievement data that are further disaggregated by gender and by migrant status, or baseline data on other academic indicators, such as grade-to-grade retention rates, student dropout rates, and percentages of students completing gifted and talented, advanced placement, and college preparatory courses. To the extent possible, the baseline data on other academic indicators should also be disaggregated.

(ii) Specific, measurable education goals

Each proposed local performance agreement must contain specific, measurable educational goals, with annual objectives, that the LEA seeks to achieve by consolidating and using funds in accordance with the terms of its proposed

agreement. The goals in the proposals must relate to the State's definition of AYP under section 1111(b)(2) of the ESEA, including narrowing achievement gaps relative to the baseline achievement data and other baseline data that are submitted.

(iii) Strategies for meeting the goals and the general purposes of the consolidated programs

(a) Strategies for meeting the goals

For each proposed local performance agreement, the SEA must describe a five-year plan that contains specific strategies for reaching your stated goals. In particular, it must describe how the LEA will consolidate and use funds received under Subpart 2 of Part A of Title II (Teacher and Principal Training and Recruitment); Subpart 1 of Part D of Title II (Enhancing Education Through Technology); Subpart 1 of Part A of Title IV (Safe and Drug-Free Schools and Communities); and Subpart 1 of Part A of Title V (Innovative Programs).

Each proposed local performance agreement should also include a five-year general budget outline for the activities that the LEA is proposing to support. The budget outline should show both Federal and other resources that will be used to support these activities, and it should reflect administrative costs. The budget outline should be accompanied by a brief narrative rationale. In addition, the proposed local performance agreement must include specific information on the amount of FY2002 funds that you propose to consolidate under the agreement. (See Cover Page in pages D-16 and D-17).

(b) Description of how each LEA with a local performance agreement will meet the general purposes of the consolidated programs

For each proposed local performance agreement, you must describe how the LEA will meet the general purposes of the programs included in the consolidation. In particular, you must describe how each proposed LEA plan would:

- Improve teacher and principal quality and increase the number of highly qualified teachers in classrooms. (Title II, Part A)
- Improve teaching and student academic achievement through the use of technology in schools. (Title II, Part D)
- Support programs that prevent violence in and around schools, and that prevent the illegal use of alcohol, tobacco, and drugs. (Title IV, Part A)
- Support local education reform efforts that are consistent with and support statewide education reform efforts. (Title V, Part A)

SELECTION CRITERIA

The Secretary will use the following criteria to select the SEAs to which he will grant State-Flex authority. The maximum points for each criterion is indicated in parentheses after the heading for that criterion.

(a) Identification of the Need for the State-Flex Authority and the Proposed Performance Agreements. (25 points)

The Secretary considers the SEA's need for State-Flex authority, including the need for the performance agreements that the SEA proposes in its State-Flex application. In determining need, the Secretary considers the extent to which—

- (i) The SEA's proposal identifies achievement gaps among different groups of students, particularly in each of the LEAs with which the SEA proposes to enter into a performance agreement.

- (ii) The State-Flex authority and proposed performance agreements will address the needs of students most at risk of educational failure.

- (iii) The LEAs that would enter into performance agreements with the SEA serve a substantial portion of the students in the State who are most at risk of educational failure.

- (iv) Requirements in the Federal programs that the SEA and LEAs with performance agreements plan to consolidate create barriers to implementing specific State and local education reform strategies.

(b) Quality of SEA and LEA Strategies for Making Adequate Yearly Progress (AYP), Narrowing Achievement Gaps, and Enhancing Education Priorities. (30 points)

The Secretary considers the quality of the strategies that the SEA will implement under its grant of State-Flex authority, including the quality of the strategies in each of the proposed performance agreements, for making AYP, narrowing achievement gaps, and for enhancing State and local education priorities. In determining the quality of these strategies, the Secretary considers the extent to which—

- (i) The strategies that the SEA proposes for consolidating and using funds under the scope of the State-Flex authority and for directing how LEAs in the State will use funds under section 5112(a) of the ESEA will likely assist the State in meeting its definition of AYP, narrowing achievement gaps, and advancing its education priorities.

(ii) The performance agreements that the SEA proposes to enter into with LEAs in the State will likely assist the State in meeting its definition of AYP, narrowing achievement gaps, and advancing its education priorities.

(iii) The strategies in each of the proposed performance agreements, especially the strategies for consolidating and using funds under the scope of the agreements, will likely assist each affected LEA in meeting the State's definition of AYP and specific, measurable goals for improving student achievement and narrowing achievement gaps.

(iv) The extent to which the SEA and LEAs with proposed performance agreements included parents, especially parents of children most at risk of educational failure, in the development of the State-Flex proposal and proposed local performance agreements.

(v) The State-Flex proposal and each of the proposed performance agreements represent a coherent, sustained approach for meeting the purposes of the State-Flex program.

(vi) The timelines for implementing the strategies in the State-Flex proposal, including timelines in the proposed performance agreements, are reasonable.

(c) Quality of the Management Plans. (30 points)

The Secretary considers the quality of the management plans that the SEA and affected LEAs would follow in implementing State-Flex activities. In reviewing the quality of the management plans, the Secretary considers the extent to which—

(i) The SEA will provide effective technical assistance and support to LEAs with performance agreements.

(ii) The SEA and each LEA with a performance agreement will use disaggregated student achievement data and data on other academic indicators to manage their proposed activities, to monitor their own progress on an ongoing basis, and to make appropriate adjustments to their implementation strategies.

(iii) The SEA will monitor LEA activities under each of the performance agreements, evaluate the effectiveness of each agreement, and propose modifications to LEA activities or to the agreements, as appropriate.

(d) Adequacy of the Resources. (15 points)

The Secretary considers the adequacy of the resources for the grant of State-Flex authority and the proposed performance agreements. In considering the adequacy of the resources, the Secretary considers the extent to which—

(i) The funds that the SEA proposes to consolidate under the grant of State-Flex authority are adequate to support the strategies that it seeks to implement with these funds.

(ii) The funds that each LEA plans to consolidate under its respective performance agreement are adequate to support the strategies in its agreement.

(iii) The SEA will coordinate the activities supported with funds consolidated under its grant of State-Flex authority with activities funded with other resources to meet the purposes of the State-Flex initiative.

(iv) Each LEA with a performance agreement will coordinate the activities supported with funds consolidated under its agreement with activities funded with other resources to meet the purposes of the agreement.

(v) The costs that the SEA and affected LEAs will incur under the grant of State-Flex authority and the proposed performance agreements are reasonable in relationship to the goals that will be achieved.

GUIDELINES FOR PREPARING YOUR STATE-FLEX PROPOSAL

- Your State-Flex proposal should address all application requirements and selection criteria. However, in preparing your application, you might need to discuss additional relevant items that may be useful in judging the quality of the proposed agreement.
- *We recommend that you organize information around the Application Requirements*
- Coherence is very important. The selection criteria reflect the expectation that the proposed 5-year plan to implement the agreement will be directed at helping the applicant meet the needs demonstrated through the baseline data, and that the proposed local performance agreements will support the State strategies contained in the 5-year plan. Any State-imposed limitation on the use of Title V funds by LEAs should also support your State's 5-year plan under State-Flex.
- Although we have not established a page limit, we encourage you to keep your application concise. We recommend that you use double-spaced pages with a 12-point or larger size font with one-inch margins at the top, bottom, and both sides, and to number pages consecutively. Any appendices to the narrative should be highly relevant to the proposal.
- We recommend that you include a table of contents as part of your State-Flex proposal.

STATE-FLEX APPLICATION COVER PAGE

We propose to enter into a State-Flexibility Demonstration Agreement with the US Department of Education to assist us in meeting our State's definition of

SEA NAME: _____

SEA ADDRESS: _____

SEA CONTACT: _____

CONTACT ADDRESS: _____

CONTACT PHONE: _____

CONTACT FAX: _____

CONTACT E-MAIL: _____

SEA CONSOLIDATED FUNDS FORM

FUNDS THE SEA PROPOSES TO CONSOLIDATE UNDER THE STATE-FLEX AGREEMENT:

Program Included (check)	ESEA Program	Amount of FY2002 State-level funds to be consolidated	Total amount of FY2002 State-level funds
<input type="checkbox"/>	Section 1004 (Title I, Part A)		
<input type="checkbox"/>	Section 1202 (d), paragraphs 4 and 5 (Reading First)		
<input type="checkbox"/>	Section 2113(a)(3) (Teacher and Principal Training and Recruitment)		
<input type="checkbox"/>	Section 2412(a)(1) (Enhancing Education Through Technology)		
<input type="checkbox"/>	Section 4112(a) (Safe and Drug-Free Schools and Communities Governor's funds) With agreement of the Governor		
<input type="checkbox"/>	Section 4112(b)(2) and (c)(1) (Safe and Drug-Free Schools and Communities SEA funds)		
<input type="checkbox"/>	Section 4202(c)(2) and (3) (21 st Century Community Learning Centers)		
<input type="checkbox"/>	Section 5112(b) (Title V, Part A, Innovative Programs)		
	TOTAL		

Authorized SEA Representative (*Please type or print name clearly.*):

Title: _____

Tel. #: () _____ - _____ Fax #: () _____ - _____

E-Mail Address: _____

Signature of Authorized SEA Representative:

_____ Date: ____/____/____

STATE-FLEX ASSURANCES

Through our duly authorized representative, we hereby assure that:

- We will submit the adequate yearly progress (AYP) definition required under section 1111(b)(2) of the ESEA by the deadline established by the Department.
- We have provided parents, teachers, and representatives of LEAs and schools with notice and an opportunity to comment on the proposed terms of the grant of State-Flex authority.
- We, and the LEAs with which we enter into performance agreements, will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds consolidated and used under the grant of authority.
- We, and the LEAs with which we enter into performance agreements, will meet the requirements of all applicable Federal civil rights laws in carrying out the grant of authority and in consolidating and using funds under the agreement.
- We, and the LEAs with which we enter into performance agreements, will provide for the equitable participation of students and professional staff in private schools consistent with section 9501 of the Elementary and Secondary Education Act, as amended (ESEA), and sections 9502, 9503, and 9504 will apply to all services and assistance provided with such funds in the same manner as such sections apply to services and assistance provided in accordance with section 9501.
- We, and the LEAs with which we enter into performance agreements, will use funds consolidated under grant of State-Flex authority only to supplement the amount of funds that would, in the absence of those Federal funds, be made available from non-Federal sources for the education of students participating in programs assisted with the consolidated funds, and not to supplant those funds.
- Not later than one year after the date on which we receive the grant of State-Flex authority, and annually thereafter during the term of the grant of authority, we will disseminate widely to parents and the general public, transmit to the U.S. Department of Education, distribute to print and broadcast media, and post on the Internet, a report that includes a detailed description of how we used the funds consolidated under the grant of authority to improve student academic achievement and reduce achievement gaps.

- We will cooperate fully in any evaluation of our Local-Flex program by the US Department of Education.
- We understand that, if our SEA is selected for conditional State-Flex authority (i.e., if we are selected for State-Flex before our State AYP definition is approved by the Department), we will not exercise our State-Flex authority or implement any portion of our State-Flex plan (including the local performance agreements) until the Department approves our AYP definition. Furthermore, we understand that if our AYP definition is not approved by March 31, 2003, we will relinquish that authority.

Signature of authorized SEA representative

Typed name of authorized SEA representative

Date

LOCAL PERFORMANCE AGREEMENT COVER PAGE*

_____ proposes to enter into a local
(name of SEA)

performance agreement with _____
(name of LEA)

to assist the parties in meeting our State's definition of adequate yearly progress and attaining specific, measurable goals for improving student achievement and narrowing achievement gaps.

LEA ADDRESS: _____

LEA NCES ID: _____

(If you don't know your NCES ID number, you may search the following website to obtain it:
<http://www.nces.ed.gov/ccdweb/school/index.asp>)

LEA CONTACT: _____

CONTACT ADDRESS: _____

CONTACT PHONE: _____

CONTACT FAX: _____

CONTACT E-MAIL: _____

Note: *You must provide this cover page for each of the four to 10 proposed local performance agreements that are included in your State-Flex proposal.*

LEA CONSOLIDATED FUNDS FORM*

FUNDS THE LEA PROPOSES TO CONSOLIDATE UNDER ITS PERFORMANCE AGREEMENT:

Program Included (check)	ESEA Program	FY2002 formula amount to be consolidated	Total FY2002 formula amount received by the LEA
<input type="checkbox"/>	Subpart 2 of Part A of Title II Teacher and Principal Training and Recruiting		
<input type="checkbox"/>	Subpart 1 of Part D of Title II Enhancing Education through Technology		
<input type="checkbox"/>	Subpart 1 of Part A of Title IV Safe and Drug-Free Schools and Communities		
<input type="checkbox"/>	Subpart 1 of Part A of Title V Innovative Programs		
	TOTAL		

(Note: An LEA may spend no more than 4% of the total amount of funds that are consolidated for administrative purposes).

Authorized LEA Representative (*Please type or print name clearly.*)

Title: _____

Tel. #: () _____ - _____ Fax #: () _____ - _____

E-Mail Address: _____

Signature of Authorized LEA Representative:

_____ Date: ____ / ____ / ____

****Note: You must provide this cover page for each of the four to 10 proposed local performance agreements that are included in your State-Flex proposal.***

SECTION E

TRANSMITTAL INSTRUCTIONS AND CHECKLIST

APPLICATION TRANSMITTAL INSTRUCTIONS

You must mail or hand-deliver your State-Flex proposal by JANUARY 17, 2003.

Applications Sent By Mail:

An application sent by mail must be addressed to Milagros Lanauze, U.S. Department of Education, Office of Elementary and Secondary Education/School Support and Technology Programs, 400 Maryland Ave., SW, Rm. 3E219, Washington, DC 20202-6400. **You must mark the package “Attention: State-Flex Application.”**

An application must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service Postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- (3) A dated shipping label, invoice, or receipt from a commercial carrier.
- (4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does **not** accept either of the following as proof of mailing:

- (1) A private metered postmark, or
- (2) A mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

SPECIAL NOTE: Due to recent disruptions to normal mail delivery, we encourage you to consider using an alternative delivery method (for example, a commercial carrier, such as Federal Express or United Parcel Service; U.S. Postal Service Express Mail; or a courier service) to transmit your application for this competition to us. If you use an alternative delivery method, please obtain the appropriate proof of mailing noted above.

Electronic Submissions:

We encourage applicants who submit hard copies to also submit an electronic version of their application.

An electronic application must be sent via the Internet as a .doc file or an .rtf or .txt file to StateFlex@ed.gov by JANUARY 17, 2003.

Applicants who plan to submit an electronic application only must also submit original hard copies of the signed cover pages and assurances forms. Signed originals must show proof of mailing (as specified above) by the application deadline. **The Department will not consider valid an electronic application that is submitted without original signatures.**

Applications Delivered by Hand/Courier Service:

An application that is hand delivered must be taken to Milagros Lanauze, U.S. Department of Education, Office of Elementary and Secondary Education/School Support and Technology Programs, 400 Maryland Ave., SW, Rm. 3E219, Washington, DC 20202-6400. **You must mark the package “Attention: State-Flex Application.”**

Deliveries are accepted between 8:00 a.m., and 5:00 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays. Proper identification is necessary to enter the building.

In order for an application sent through a Courier Service to be considered timely, the Courier Service must be in receipt of the application on or before the closing date.

APPLICATION CHECKLIST

Does your application include –

- ☐ A completed cover page signed by an authorized SEA representative?
- ☐ The SEA Consolidated Funds Form?
- ☐ Statewide baseline academic data and LEA achievement profiles?
- ☐ A proposed five-year plan that -
 - ☐ Describes the SEA's strategies for consolidating and using State level funds under State-Flex
 - ☐ Describes how the local performance agreements support the State-Flex proposal
 - ☐ Describes any limitations that the SEA will impose on the use of Title V funds by LEAs, and what the SEA intends to achieve through these limitations
and
 - ☐ Addresses the selection criteria?
- ☐ Proposed local performance agreements with 4 to 10 LEAs, at least half of which are with LEAs with 20% or higher poverty according to Census data, each of which includes:
 - ☐ A completed cover page signed by an authorized LEA representative
 - ☐ The LEA Consolidated Funds Form
 - ☐ A proposed five-year plan that contains-
 - ☐ Baseline academic data
 - ☐ Specific, measurable education goals
 - ☐ Strategies for meeting the goals
 - ☐ A description of how the LEA will meet the general purposes of the consolidated programs?
- ☐ The assurances page signed by an authorized SEA representative?

Did you –

- ☐ Provide one (1) original plus three (3) copies of the application (for a total of **4** copies)?
- ☐ Include “**Attention: State-Flex Application**” on the cover and envelope containing your proposed agreement?

SECTION F

PROCEDURES FOR SELECTING STATE-FLEX PARTICIPANTS

PROCEDURES FOR SELECTING STATE-FLEX PARTICIPANTS

- We will acknowledge the receipt of your application by e-mail. If you do not receive a notification of application receipt within 15 days from the date of mailing or hand delivery of your application, you should send an e-mail to StateFlex@ed.gov.
- We will conduct a peer review of all eligible applications that are submitted by the January 17, 2003 deadline. By statute, peer reviewers will be individuals who represent parents, teachers, SEAs, LEAs, and who are familiar with educational standards, assessments, accountability, curriculum, instruction and staff development, and other diverse educational needs of students.
- Reviewers will evaluate applications for State-Flex authority based on the selection criteria in this package.
- If an SEA selected for State-Flex authority has not yet had its AYP definition approved by the Department, that SEA will receive conditional State-Flex authority. An SEA with conditional State-Flex authority will not be able to exercise its State-Flex authority or implement any portion of its State-Flex plan (including the local performance agreements) unless the Department approves the SEA's AYP definition by March 31, 2003.
- We expect to negotiate an actual agreement between a participating SEA and the Department. The agreement will essentially incorporate the State-Flex proposal and specify the specific, measurable educational goals that the applicant proposes to meet through the grant of State-Flex authority.

SECTION G

ESTIMATED PUBLIC REPORTING BURDEN

ESTIMATED PUBLIC REPORTING BURDEN

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1810-0660. The time required to complete this information collection is estimated to average 640 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form, write directly to:** Charles Lovett, U.S. Department of Education, Office of Elementary and Secondary Education, School Support and Technology Programs, 400 Maryland Avenue, S.W., Room 3E241, Washington D.C. 20202-6400